

**United States Department of Labor
Employees' Compensation Appeals Board**

N.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Hicksville, NY, Employer**

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**Docket No. 10-778
Issued: December 16, 2010**

Appearances:

Thomas S. Harkins, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

COLLEEN DUFFY KIKO, Judge

JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 27, 2010 appellant filed a timely appeal from a September 25, 2009 decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained additional conditions causally related to the May 23, 2001 employment injury; (2) whether the Office met its burden of proof to terminate appellant's compensation benefits effective October 8, 2008 on the grounds that she had no residuals of a May 23, 2001 employment injury; and (3) whether appellant established that she had any continuing employment-related disability or condition after that date due to her accepted conditions. On appeal, her attorney asserts that the accepted conditions should be expanded to include all conditions outlined in the medical evidence provided by her treating physicians and further asserted that she continued to suffer employment-related disability.

FACTUAL HISTORY

On May 23, 2001 appellant, then a 45-year-old city mail carrier, filed a traumatic injury claim, alleging that she sustained back and arm injuries, headaches and high blood pressure when her postal vehicle was rear-ended that day. She refused medical treatment that day, stopped work on May 29, 2001 and did not return. The Office accepted that appellant sustained employment-related lumbar and neck strains and she was placed on the periodic compensation rolls.

In a May 29, 2001 report, Dr. Peter J. Lesniewski, a Board-certified orthopedic surgeon, noted appellant's complaints of cervical, thoracic and lumbar spine pain and headaches. Physical examination demonstrated an unremarkable amount of spasm with restriction of motion. Appellant was neurologically intact, with no evidence of myelopathy or radiculopathy. A June 29, 2001 magnetic resonance imaging (MRI) scan of the cervical spine demonstrated cervical kyphosis compatible with reflex muscle spasm; C3-4 posterior disc bulge; C4-5 through C6-7 posterior disc herniations with ventral cerebrospinal fluid impression; at C5-6 disc herniation increases right paracentrally with central canal stenosis at this level; right C4-5, right C5-6 and right greater than left C6-7 foraminal narrowing; and findings suggesting C5 and C6 hemangiomas. A June 29, 2001 MRI scan of the lumbar spine demonstrated L3-4 through L5-S1 posterior disc bulging. On July 11, 2001 Dr. Lesniewski noted the MRI scan findings. He continued to submit reports and advise that appellant could not return to work. On September 20, 2001 Dr. Lesniewski advised that appellant had complaints of radiating lower back pain and noted on October 2, 2001 that she continued to have problems with her back and neck. Appellant was neurologically intact on physical examination with full motor and sensory examinations.

In reports dated from June 13 to August 10, 2001, Dr. Kwan Jakobsen, a Board-certified physiatrist, noted the history of injury and appellant's complaints of neck, mid and low back pain, headaches and occasional numbness and tingling. He provided physical examination findings and diagnosed cervical disc herniation, lumbar disc bulge, paresthesias, weakness and muscle spasm and advised that she could not work. A September 14, 2001 upper extremity electromyographic (EMG) study demonstrated evidence of a mild right C5-6 radiculopathy. Dr. Jakobsen continued to submit reports, noting physical examination findings of muscle spasm and diminished range of motion, with an additional diagnosis of cervical radiculopathy and advised that appellant could not work.

In reports dated June 21 to August 22, 2001, Dr. Steven Ender, a Board-certified neurologist, noted the history of injury and appellant's complaint of daily headaches. He provided physical examination findings and diagnosed cervicogenic headaches, cervical spondylosis, multiple levels of disc herniations, neural foraminal stenosis and lumbosacral paraspinal muscle strain.

In attending physician's reports dated July 16 and November 9, 2001, Dr. Jakobsen diagnosed displaced intervertebral discs in the cervical and lumbar spine and checked a form box "yes," stating that the diagnosed conditions were caused while driving a mail delivery truck. November 20, 2001 he stated that appellant sustained cervical disc herniations and lumbar disc bulges on May 23, 2001 when she was rear-ended and opined that she could not work. In a

report dated November 23, 2001, Dr. Jakobsen described his treatment, noted the MRI scan and EMG study findings and her complaints of significant neck and back pain. He diagnosed cervical disc herniation with radiculopathy, lumbar disc bulge, improving paresthesia, weakness and muscle spasm and advised that, based on the history provided and initial physical examination, appellant's injuries were attributed to the May 23, 2001 motor vehicle accident. On February 13, 2002 Dr. Jakobsen additionally diagnosed lateral epicondylitis and myofascial pain syndrome and advised that, most likely, she would not be able to return to her letter carrier duties but could perhaps return to a light-duty position in the future. He continued to submit reports through October 28, 2002, noting that appellant had severe chronic pain and advised that she could not return to work due to poor sitting, standing and walking tolerance.¹

On October 9, 2002 appellant was referred to Dr. Richard S. Goodman, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a November 6, 2002 report, Dr. Goodman noted his review of the medical record, the history of injury and appellant's report that she had not returned to work because of headaches, backaches and depression. He provided physical examination findings of limited cervical and lumbar range of motion with symmetrical sensory and motor examinations and a normal straight leg raising test. Dr. Goodman advised that appellant had fully recovered from the employment-related cervical and lumbar strains and that the diagnoses of cervical arthritis with multiple cervical herniated discs were due to degenerative changes in the cervical spine and were not caused by the May 23, 2001 work injury. He advised that she continued to have symptoms due to these nonwork-related conditions with a poor prognosis and concluded that she could return to sedentary work. In an attached work capacity evaluation, Dr. Goodman advised that appellant could sit four hours daily; stand, walk, reach and twist for two hours; twist, push and pull for one hour, with a 15-pound weight restriction.

In a September 23, 2003 report, Dr. Lesniewski noted findings of tenderness and spasm on examination of the cervical and lumbar spine with diminished range of motion and full motor and sensory examinations. He diagnosed cervical herniations and spondylosis and lumbar spondylosis and advised that the conditions were related to the May 2001 motor vehicle accident with significant occupational disability. In reports dated October 25 and 31 and November 4, 2004, Dr. Lesniewski reported no change in appellant's situation or examination, advised that maximum medical improvement had been reached and that she could not work. In a work capacity evaluation dated January 11, 2006, he advised that she had too many restrictions to return to work, stating that she could sit, walk and stand 20 to 30 minutes at a time; could not twist, bend, stoop, squat or kneel; and could push, pull and lift 10 pounds. Dr. Lesniewski advised that appellant required 10- to 15-minute breaks every 20 to 30 minutes. In reports dated August 16 and 18, 2006, he provided physical examination findings of restricted cervical motion of the neck and lumbar spine. Motor and sensory examination were full, with no atrophy. Dr. Lesniewski provided an August 18, 2006 work capacity evaluation, in which he reiterated his restrictions, stating they were permanent. On August 28, 2007 he again advised that appellant's condition had not changed, referred to the physical findings of the August 16, 2006 examination and attached a work capacity evaluation in which he reiterated his restrictions and advised that

¹ Appellant also submitted unidentified medical reports. She received a third-party settlement.

she was totally disabled. On March 20, 2008 Dr. Lesniewski provided a work capacity evaluation duplicating his previous restrictions.

On June 10, 2008 the Office referred appellant to Dr. P. Leo Varriale, Board-certified in orthopedic surgery, for a second opinion evaluation. In a June 25, 2008 report, Dr. Varriale noted the history of injury, his review of the medical record and appellant's complaints of nonradiating neck and lower back pain. Cervical and lumbar spine examination demonstrated no spasm with some decreased range of motion, full strength and no sensory deficits. Straight leg raising test was negative bilaterally. Dr. Varriale diagnosed resolved cervical and lumbosacral strain and preexisting degenerative disc disease of the cervical and lumbar spine. He advised that appellant had reached maximum medical improvement and could not return to her regular job as a city carrier due to chronic neck and back pain caused by the preexisting degenerative disc disease and that she could work six hours of sedentary work daily with lifting restricted to 20 pounds. In an attached work capacity evaluation, Dr. Varriale advised that she could sit, walk and stand for two hours; bend and stoop for one hour; and push, pull and lift 50 pounds for two hours daily. In a supplemental report dated August 12, 2008, he advised that there were no objective findings of cervical and lumbosacral strain.

On September 4, 2008 the Office proposed to terminate appellant's compensation benefits on the grounds that the medical evidence, as characterized by Dr. Varriale's opinion, established that she no longer suffered residuals or disability due to the accepted conditions. In a September 15, 2008 report, Dr. Alfred F. Faust, a Board-certified orthopedist, noted appellant's report that she was injured when her vehicle was hit from the rear and pushed one block forward and her complaints of chronic neck and back pain and headaches. He advised that cervical examination was normal with intact sensation and back demonstrated normal motor strength and sensation. Dr. Faust diagnosed degenerative disc disease of the cervical and lumbar spines, lumbago and cervicgia. He stated that appellant had continued difficulty since the 2001 accident that interfered with activities of daily living and employment and advised that she had residual limitations due to preexisting conditions.

By decision dated October 8, 2008, the Office finalized the termination. On June 29, 2009 appellant, through her attorney, requested reconsideration. He asserted that the Office should expand the accepted conditions to include all conditions outlined in the medical evidence and that the Office did not properly terminate appellant's compensation benefits because a conflict in medical evidence existed. In an undated report, Dr. Jakobsen advised that appellant's cervical flexion was within normal limits with limited extension and rotation. Lumbar range of motion was improved. In a February 2, 2009 report, Dr. Dwiref Mehta, a Board-certified surgeon, noted that appellant sustained neck and lower back injuries in a motor vehicle accident on May 23, 2001 and his review of Dr. Lesniewski's reports and the MRI scan reports dated July 2, 2001. He stated that he first examined appellant on November 28, 2008 for complaints of neck pain radiating to the right upper extremity and low back pain radiating to the right lower extremity. Physical examination demonstrated tenderness, spasm and decreased range of motion of the cervical and lumbar spines with a positive straight leg raising test. Strength was 4/5 in both lower extremities and sensation was decreased in the C5-6 dermatomes of the right upper extremity. Dr. Mehta diagnosed cervical disc herniation and radiculopathy and lumbar posterior disc bulges at L3-4 through L5-S1 with radiculopathy. He advised that appellant was totally disabled, stating that activity could cause severe radiating pain in the neck and lower back "and

most likely have exacerbation of her symptoms due [to] the job[-]related accident of May 23, 2001.” An unsigned and unidentified psychiatric evaluation dated April 1, 2009,² noted that appellant, who had not worked since a motor vehicle accident in May 2001, was first seen on November 19, 2008 with a history of partial mastectomy due to breast cancer in July 2008 and that she had recently completed intravenous chemotherapy. Appellant’s complaints of neck and back pain and chronic headaches were reported.

By decision dated September 25, 2009, the Office denied modification of the October 8, 2008 decision. It discussed appellant’s arguments on reconsideration and found that her compensation benefits were properly terminated based on Dr. Varriale’s well-rationalized report and that the subsequently submitted medical evidence was insufficient to establish that she had any continuing disability. The Office further found that the weight of the medical evidence showed that the accepted conditions had resolved and that additional complaints were found to be unrelated to the May 23, 2001 employment injury.

LEGAL PRECEDENT -- ISSUE 1

Office regulations at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.³ In order to determine whether an employee sustained an injury in the performance of duty, the Office begins with an analysis of whether “fact of injury” has been established. Generally, “fact of injury” consists of two components which must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.⁴

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that a claimed medical condition was caused or adversely affected by employment factors. This burden includes the submission of a detailed description of the employment factors or conditions, which the claimant believes caused or adversely affected the condition or conditions for which compensation is claimed. If a claimant does establish an employment factor, she must submit medical evidence showing that a medical condition was caused by such a factor.⁵

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁶ Rationalized medical evidence is medical evidence which includes a physician’s rationalized medical opinion on the issue of whether there

² Appellant’s attorney asserted that the report was prepared by Dr. Juliana Kanji, a psychiatrist.

³ 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁴ *Tracey P. Spillane*, 54 ECAB 608 (2003).

⁵ *V.C.*, 59 ECAB 137 (2007).

⁶ *D.G.*, 59 ECAB 734 (2008).

is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish that she sustained additional conditions caused by the May 23, 2001 motor vehicle accident when her postal vehicle was rear-ended. To establish causal relationship, a claimant must submit a physician's report in which the physician reviews the employment factors identified as causing the claimed condition and, taking these factors into consideration as well as findings upon examination, states whether the employment injury caused or aggravated the diagnosed conditions and presents medical rationale in support of his or her opinion.⁹

The accepted conditions are cervical and lumbar strains. Regarding any additional orthopedic conditions, while the record contains MRI scan evidence of cervical disc herniations and lumbar disc bulges, the medical record does not contain sufficient rationalized explanation that these conditions were caused or aggravated by the May 23, 2001 motor vehicle accident. Neither Dr. Ender nor Dr. Mehta provided an opinion regarding the cause of any diagnosed condition and medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁰

In reports dated July 16 and November 9, 2001, Dr. Jakobsen checked a form box "yes" and stated that the diagnosed conditions of displaced intervertebral discs were caused while driving a postal vehicle. When a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.¹¹ While Dr. Jakobsen also advised in reports dated November 20 and 23, 2001 that, based on the history provided and his initial physical examination, the cervical disc herniations and lumbar disc bulges were caused by the May 23, 2001 motor vehicle accident, he did not provide any medical rationale explaining the mechanics of how appellant's cervical disc herniations and lumbar disc bulges were caused or aggravated by the May 23, 2001 employment injury.

⁷ *Id.*

⁸ *Roy L. Humphrey*, 57 ECAB 238 (2005).

⁹ *J.M.*, 58 ECAB 303 (2007).

¹⁰ *Willie M. Miller*, 53 ECAB 697 (2002).

¹¹ *D.D.*, 57 ECAB 734 (2006).

In a September 23, 2003 report, Dr. Lesniewski diagnosed cervical herniations and spondylosis and lumbar spondylosis and advised that the conditions were related to the May 2001 motor vehicle accident with significant occupational disability. He too, did not sufficiently explain how these numerous disc herniations and bulges were caused or aggravated by the employment-related motor vehicle accident. As neither physician submitted sufficient rationale in support of his conclusions, their reports are insufficient to establish that additional cervical and lumbar conditions are employment related.¹²

Dr. Faust, who examined appellant in September 2008, noted the history of injury and her complaints of chronic neck and back pain and headaches and her report that she was injured when her vehicle was hit from the rear. Motor strength and sensory examinations were normal. While Dr. Faust diagnosed degenerative disc disease of the cervical and lumbar spines, lumbago and cervicgia and advised that appellant had continued difficulty since the 2001 accident that interfered with activities of daily living and employment, he also stated that she had residual limitations due to preexisting conditions. The Board finds this report contradictory in regard to causal relationship and while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.¹³ Dr. Faust's report is thus insufficient to meet appellant's burden to establish that additional conditions were caused by the May 23, 2001 employment injury.

The Office referral physicians, Dr. Goodman, who examined appellant in November 2002, and Dr. Varriale, who provided a second opinion evaluation on June 25, 2008, were in agreement that the accepted cervical and lumbar strains had resolved and the cervical and lumbar degenerative disc disease was preexisting and not caused by the May 23, 2001 motor vehicle accident. A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that a claimed medical condition was caused or adversely affected by employment factors.¹⁴ The Board finds that the weight of the medical opinion evidence rests with the opinions of Drs. Goodman and Varriale regarding whether appellant had additional orthopedic conditions causally related to the May 23, 2001 employment injury and she did not submit sufficient rationalized evidence to create a conflict in medical evidence.¹⁵

In regard to any claim for an employment-related emotional condition, the only evidence submitted is an unsigned and unidentified psychiatric evaluation dated April 1, 2009. While appellant's attorney asserted that this report was prepared by Dr. Kanji, a psychiatrist, this report

¹² *J.M.*, *supra* note 9.

¹³ *Ricky S. Storms*, 52 ECAB 349 (2001).

¹⁴ *V.C.*, *supra* note 5.

¹⁵ In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight. *Manuel Gill*, 52 ECAB 282 (2001).

does not constitute competent medical evidence because it cannot be identified as having been prepared by a physician as defined by the Federal Employees' Compensation Act.¹⁶

Thus, as discussed above, contrary to appellant's assertions on appeal, she did not establish that she sustained additional conditions caused, aggravated or a consequence of the May 23, 2001 employment injury.¹⁷

LEGAL PRECEDENT -- ISSUE 2

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.¹⁸ The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹⁹

ANALYSIS -- ISSUE 2

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits on October 8, 2008. As noted above, the accepted conditions in this case are cervical and lumbar disc bulges and an emotional condition have not been accepted as employment related.

The medical evidence most contemporaneous with the October 8, 2008 termination includes Dr. Lesniewski's August 28, 2007 report when he advised that appellant's condition had not changed and referenced the physical findings of his August 16, 2006 report.²⁰ Dr. Lesniewski also provided a March 20, 2008 work capacity evaluation in which he duplicated his previous restrictions. It is unclear whether he examined appellant after August 16, 2006 and generally, findings on examination are needed to justify a physician's opinion that an employee is disabled from work.²¹ In a June 25, 2008 report, Dr. Varriale advised that cervical and lumbar

¹⁶ *Vickey C. Randall*, 51 ECAB 357 (2000).

¹⁷ In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, Larson notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury. Larson, *The Law of Workers' Compensation* § 10.01 (December 2000); see *Charles W. Downey*, 54 ECAB 421 (2003). In the case at hand, there is no medical evidence that contains an opinion that appellant's cervical disc herniations and lumbar disc bulges were aggravated by the May 23, 2001 employment injury.

¹⁸ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹⁹ *Id.*

²⁰ The Board has held that contemporaneous evidence is entitled to greater probative value than later evidence. *S.S.*, 59 ECAB 315 (2008).

²¹ *Laurie S. Swanson*, 53 ECAB 517 (2002).

spine examination demonstrated no spasm, some decreased range of motion, full strength and no sensory deficits with a negative straight leg raising test bilaterally. He diagnosed resolved cervical and lumbosacral strain and preexisting degenerative disc disease of the cervical and lumbar spine and advised that appellant had reached maximum medical improvement. While Dr. Varriale advised that appellant could not return to her regular job as a city carrier, he stated that this was due to chronic neck and back pain caused by the preexisting degenerative disc disease and not due to the accepted conditions. In a supplemental report dated August 12, 2008, he advised that there were no objective findings of cervical and lumbosacral strain.

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report.²² The Board finds that the Office properly determined that the weight of the medical opinion evidence rested with the opinion of Dr. Varriale who provided a comprehensive report in which he outlined examination findings and provided a rationalized explanation for his opinion that appellant's accepted conditions of lumbar and neck strains had resolved. The Office therefore met its burden of proof to terminate her compensation benefits on October 8, 2008.

LEGAL PRECEDENT -- ISSUE 3

As the Office met its burden of proof to terminate appellant's compensation benefits on October 8, 2008, the burden shifted to her to establish that she had any continuing disability causally related to her accepted right upper extremity injury.²³ To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.²⁴ The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.²⁵

ANALYSIS -- ISSUE 3

The Board finds that appellant submitted insufficient medical evidence with her June 29, 2009 reconsideration request to establish that she continued to be disabled after October 8, 2008 due to the accepted lumbar and neck strains. With her reconsideration request, appellant submitted an undated report, in which Dr. Jakobsen did not comment on whether she continued to be disabled from work. Dr. Jakobsen's report is therefore of diminished probative value on

²² *Michael S. Mina*, 57 ECAB 379 (2006).

²³ *See Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

²⁴ *Jennifer Atkerson*, 55 ECAB 317 (2004).

²⁵ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

the issue of continued disability. While Dr. Mehta, who provided a February 2, 2009 report, noted physical examination findings and diagnosed cervical disc herniation and lumbar disc bulges with radiculopathy and advised that appellant was totally disabled, he did not explain how the accepted conditions of cervical and lumbar strain caused her disability. As discussed above, Dr. Varriale provided a comprehensive report in which he outlined examination findings and provided a rationalized explanation for his opinion that she accepted conditions of lumbar and neck strains had resolved and that any disability was due to preexisting degenerative disc disease.

Under the Act, the term “disability” means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in the Act.²⁶ Dr. Mehta’s report is therefore insufficient to establish that these conditions are employment related²⁷ or to create a conflict with the well-rationalized report of Dr. Varriale. The medical evidence in this case is insufficient to establish that appellant continues to have work-related disability due to the accepted cervical and lumbar strains after October 8, 2008 due to the accepted conditions.

CONCLUSION

The Board finds that appellant failed to establish that other diagnosed conditions were caused by the May 23, 2001 employment injury, that the Office met its burden of proof to terminate her compensation benefits on October 8, 2008 and that she failed to meet her burden of proof to establish that she had any disability after October 8, 2008 causally related to the accepted lumbar and neck strains.

²⁶ 20 C.F.R. § 10.5(f); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

²⁷ *Jennifer Atkerson*, *supra* note 24.

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 16, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board